



Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact support@jstor.org.

Fed. Rep. 121, held the law valid under these provisions on the ground that classifications of persons or corporations to be affected, if not arbitrary, are proper; but, on the other hand, it held that (2) and (3) above violate the 14th Amendment to the Federal constitution in that they deprive insurance companies of the "liberty" to make all contracts not tainted with an illegal or immoral consideration, or injurious to the public health or welfare. The court waived a discussion as to the validity of (1) above, but regarded (1) (2) and (3) as inseparable. The Supreme Court upheld the statute on the ground that both Federal and State statutes of a similar nature have been held constitutional, the former under the 5th Amendment, and the latter under the 14th. See: *Northern Securities Co. v. U. S.* (1904), 193 U. S. 115; and *Swift & Co. v. U. S.* (1905), 196 U. S. 375—both involving the Sherman anti-trust act. Also see: *Smiley v. Kansas* (1905), 196 U. S. 447 (involving a State statute prohibiting trusts); and *National Cotton Oil Co. v. Texas* (1905), 197 U. S. 115 (involving a State statute prohibiting combinations to restrict production and control prices).

CONSTITUTIONAL LAW—PROSECUTION BY INFORMATION DUE PROCESS OF LAW.—The act of 1904, providing that state's attorney may prosecute by information all crimes, except those punishable by death or imprisonment in State prison for life, is *held* constitutional. *State v. Lee*, and *State v. Stimpson* (1905), — Vt. —, 62 Atl. Rep. 14.

This same question has been disposed of in but comparatively few of the States. Stimpson was convicted of rape and Lee was convicted of grand larceny on information by State's attorney, and the cases were heard together on error. It was claimed that this statute violated the provision of the State and Federal constitutions providing that no person can be "justly deprived of his liberty except by the laws of the land" or "by due process of law," and that the "laws of the land" require prosecutions of common-law felonies to be by indictment. The practical construction of such an expression, acquiesced in for considerable time, is always a valuable aid in determining the intent and meaning of such words. The early statutes of Vermont passed in 1797 and 1818 provided that no person should be tried for crimes until a bill of indictment was found against him by the grand jury. In 1839 a statute was passed extending the use of information to cases where penalty was not over seven years. See *State v. Magoon*, 61 Vt. 45 (1888), holding: a prosecution for grand larceny cannot be begun by information, if penalty is more than seven years' imprisonment. See also *State v. Dyer*, 67 Vt. 690 (1894). The Amended Acts of 1898 extended power to prosecute by information in cases where penalty was not over twenty years. See late case of *State v. Leach*, 59 Atl. Rep. 168 (1904), holding that statutory rape can be prosecuted by information. The Amended Acts of 1904, here contested, take another step and extend the use of information to all cases except where penalty is death or life imprisonment. It thus appears that during the whole time since the adoption of the State constitution, the legislature has construed the term "laws of the land" as not to require common-law felonies to be prosecuted only by indictment. In *State v. Bosworth*, 13 Vt. 402-13 (1841),

CH. J. WILLIAMS said: "Questions arising under the constitution, settled by a long and uniform practice, and sanctioned by a judicial decision, should be considered as at rest." See *Boyden v. Town of Brookline*, 8 Vt. 284 (1836); *Briscoe v. Bank of the Commonwealth of Kentucky*, 11 Pet. Rep. 257-318 (1837). It is generally conceded that "law of the land" and "due process of law" mean the same thing, whatever that is, and if they were combined to read "due process of the law of the land," CH. J. ROWELL of the Vermont Supreme Court, claims their meaning would not be changed. The exact point in question was passed on by the United States Supreme Court in *Hurtado v. People of California*, 110 U. S. 516 (1884), which held that a conviction upon an information for murder and a sentence of death thereon, are not illegal by virtue of the 14th Amendment, which prohibits the States from depriving any person of life, liberty or property without due process of law. In *Brown v. Levee Commissioners*, 50 Miss. 468 (1874), the court says that the bill of rights does not take from the legislature the power to amend the law. Utah interprets "due process of law" as meaning law in the regular course of administration through the courts. In *re McKee*, 19 Utah 231 (1899). Also Kentucky and New York. See *Garnett v. Jennings*, 44 S. W. Rep. 382 (1898), and *Westervelt v. Gregg*, 12 N. Y. 202 (1854). The use of the information in felony cases has been allowed in several States whose constitutions made no special provisions therefor. The constitutions of other States have been amended to authorize such use, and in still others, special acts of the legislatures have been passed adopting it. See *Kallock v. Superior Court*, 56 Cal. 229; *Lybarger v. State*, 2 Wash. 552 (1891); *In re Boulter*, 5 Wyo. 329 (1895); *Kansas v. Whisner*, 35 Kan. 271 (1886); *State v. Moore*, 46 Atl. Rep. 669 (1899); *State v. Jones*, 168 Mo. 398 (1902); *State v. Tucker*, 36 Ore. 291 (1900); *Rowan v. State*, 30 Wis. 129 (1872). However, some States hold the other way, notably Massachusetts. See *Jones v. Robbins*, 8 Gray 329 (1857). Also *In re Lowrie*, 8 Colo. 499, holding a statute unconstitutional, which prohibited summoning and impaneling of grand jury in any criminal court.

CONTRACTS—AGREEMENT TO EMPLOY ONLY MEMBERS OF A CERTAIN UNION.—The defendant contracted with a labor union to employ for a certain time only members of that union and to "cease to employ" any one who should be reported by the proper officers not to be in good standing. The contract having been broken, plaintiff union brought suit on a promissory note given by the defendant to secure faithful performance on his part. *Held*, (JUDGES VANN and BARTLETT dissenting and O'BRIEN J. absent), that the contract was valid. *Jacobs v. Cohen et al.* (1905),—N. Y.—, 76 N. E. Rep. 5.

This case reverses the holding of the Supreme Court, Appellate Division (90 N. Y. Supp. 854, 99 App. Div. 481). In the case of *Curran v. Galen* (1897), 152 N. Y. 33, 46 N. E. 297, 37 L. R. A. 802, 57 Am. St. Rep. 496, it was held that an agreement between an employer and a union by which the former agreed to hire only members of the latter, was no defense to an action by an employee against the union for procuring his discharge. To the same effect is *Berry v. Donovan* (1905),—Mass.—, 74 N. E. 603. In the last